

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE:	:	APPEAL NO. C-070772
		TRIAL NO. F89-3093
VICKI STEWART,	:	
		<i>JUDGMENT ENTRY.</i>
Plaintiff-Appellee,	:	
vs.	:	
GREGORY LEONARD,	:	
Defendant-Appellant.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Vicki Stewart gave birth to a child on October 27, 1983. Because Stewart was receiving public assistance, she assigned her right to child support to the state of Ohio. A paternity complaint was filed against defendant-appellant Gregory Leonard on September 8, 1989. Genetic testing showed that Leonard was the child's father. The case was set for August 21, 1990, to establish a support order. Leonard failed to appear and a support order was set in the amount of \$100 per week, effective on October 27, 1983, the date of the child's birth. The support order resulted in an immediate arrearage that Leonard was ordered to liquidate at \$50 per week. No appeal was taken from the support order.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

On May 27, 1992, Leonard filed a motion to modify support, which the trial court granted. Leonard's support order was modified to \$25 per week for current support and \$10 per week on the arrearage, effective on July 1, 1992. On May 21, 1993, Leonard filed a motion to terminate the arrearage, which the trial court denied. No objection or appeal was filed. On January 11, 1995, Leonard filed another motion to terminate the arrearage, which the trial court dismissed on the basis of res judicata. No appeal was filed. The child became emancipated. On May 13, 2004, Leonard filed yet another motion to terminate the arrearage, which the trial court overruled. Leonard filed an appeal from that decision. We dismissed the appeal for failure to file a docket statement.

On August 3, 2005, Leonard filed a motion to modify the arrearage. On October 2, 2006, the magistrate denied Leonard's motion. Leonard filed objections and added a claim for equitable relief under an unjust-enrichment theory. Leonard argued that the state was wrongfully attempting to collect more child support from him than it had paid in public-assistance benefits for the child. The trial court overruled the objections. The court overruled the motion to modify the arrearage on the basis of res judicata, finding that the issue had been decided and that Leonard had not perfected an appeal from the prior decisions. After a hearing at which the court allowed Leonard to present evidence, the court overruled the objection that had been based on the claim for unjust enrichment. Leonard has appealed, raising for our review only the trial court's ruling on the equitable claim for unjust enrichment.

Leonard's sole assignment of error alleges that the juvenile court erred in rejecting his unjust-enrichment claim because former R.C. 5107.07(A), now R.C. 5107.20, allowed the state to recover from a child-support obligor only the amount of benefits actually paid by the state on behalf of the child. "Unjust enrichment occurs

when a person ‘has and retains money or benefits which in justice and equity belong to another.’ ”²

In *In re Prince*,³ the appellant father sought review of an order to pay \$271 per month in child support. The mother was already receiving public assistance for two children. She had had the father’s child and had assigned her right to receive support from him to the Department of Human Services (“DHS”). Under the formula in former R.C. 5107.07, the mother received the first \$50 of the \$271 that the father paid each month under the support order. The DHS retained the balance of \$221, but paid only \$79 of that amount to the mother in increased benefits. The father argued that the support order was unlawful because a substantial portion of the support was retained by the DHS. The Fifth Appellate District held that the father’s support obligation of \$271 was not affected by the mother’s assignment of her right to receive support to the DHS.

In this case, Leonard was under a valid court order to pay child support of \$100 per week. His failure to pay support resulted in an arrearage. Stewart had the right to receive child support from Leonard. The fact that Stewart had assigned her right to receive support to the Child Support Enforcement Agency did not affect Leonard’s obligation to pay support pursuant to the court order. If the state recovers from Leonard an amount in excess of the amount it has paid in benefits for the child, any claim of unjust enrichment would belong to Stewart. Leonard has no claim for unjust enrichment because the money or benefits allegedly unjustly retained do not belong to him. The assignment of error is overruled.

² See *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, citing *Hummel v. Hummel* (1938), 133 Ohio St. 520, 14 N.E.2d 923.

³ (Jan. 21, 1992), 5th Dist. No. CA-8661.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on November 19, 2008
per order of the Court _____.
Presiding Judge